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10/689,397

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Ronald R. Weiss

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EXAMINER

BECKER, DREW E

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD R. WEISS

Appeal 2008-3409
Application 10/689,397
Technology Center 1700

Decided: July 18, 2008

Before BRADLEY R. GARRIS, CHARLES F. WARREN, and
PETER F. KRATZ, *Administrative Patent Judges*.

GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's
decision rejecting claims 26-29. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellant claims a method of popping corn comprising, for a cold
start batch, applying heat to the kettle without PID (i.e., proportional integral

derivative) temperature control and, for a subsequent batch, applying heat to the kettle with PID temperature control.

Representative claim 26, the sole independent claim on appeal, reads as follows:

26. A method of popping corn in a plurality of batches from batches of corn and oil loaded into a kettle, beginning with a cold start batch and then subsequent batches, including the steps of:

for a cold start batch, applying heat to the kettle without PID temperature control to pop the popping corn of the cold start batch within the kettle; and

for a subsequent batch, applying heat to the kettle with PID temperature control to pop the popping corn of the subsequent batch within the kettle.

The references set forth below are relied upon by the Examiner as evidence of obviousness:

Vande Walker	4,182,229	Jan. 8, 1980
Cartwright	5,352,866	Oct. 4, 1994

Claims 26-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Vande Walker in view of Cartwright.

The dependent claims on appeal have not been separately argued (Br. 11-13). Accordingly, these claims will stand or fall with representative independent claim 26.

We will sustain the above-noted rejections for the reasons expressed in the Answer and below.

It is undisputed that Vande Walker discloses a method of popping corn using sensor (i.e., non-PID) temperature control for each popping cycle (col. 5, l. 48 – col. 6, l. 35) and that Cartwright discloses a method of

popping corn using PID temperature control for each popping cycle (col. 2, ll. 13-29, col. 9, ll. 20-32). It is the Examiner's ultimate conclusion that one with ordinary skill in this art would have found it obvious to retain Vande Walker's sensor temperature control for a cold start batch of popping corn but to replace this sensor temperature control with the PID temperature control taught by Cartwright for a subsequent batch of popping corn (Ans. 4-5).

Appellant argues "the Examiner's position fails to address why one of ordinary skill in the art would be motivated to modify the PID temperature control of Cartwright . . . to override the PID temperature control during a first cooking cycle [i.e., a cold start batch of popping corn] as recited in the instant claims" (Br. 13.).

In fact, the Examiner has provided specific reasons for such motivation including the desire to combine the rapid heating advantage of Vande Walker's sensor temperature control for a cold start batch with the higher accuracy and repeatability advantage of Cartwright's PID temperature control for subsequent batches (Ans. 4-7). Furthermore, the Examiner properly cites *KSR Int'l. Co. v. Teleflex, Co.*, 127 S. Ct. 1727, 1739 (2007) in support of the proposition that the proposed combination of Vande Walker's sensor temperature control with Cartwright's PID temperature control would yield no more than predictable results (Ans. 5-7). Significantly, Appellant has not provided the record of this appeal with any rebuttal to the Examiner's exposition of these matters.

Under these circumstances, the facts, arguments, and evidence of record weigh most heavily in support of the Examiner's obviousness conclusion. In addition, a conclusion of obviousness is reinforced by

Appellant's disclosure "it was discovered that upon introducing the temperature controller 82 and its PID aspects in the first cycle, that the first batch of popcorn would not cook properly" (Spec. 80:18-20). This is because such a "discovery" would have been apparent to an artisan using Cartwright's PID temperature control for cooking the first batch of popping corn and would have motivated the artisan to not use PID temperature control for this first batch.

For the above stated reasons and the reasons expressed in the Answer, we sustain the § 103 rejection of claims 26-29 as being unpatentable over Vande Walker in view of Cartwright.

The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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